LYE TUCK CHUNG & ORS v. PENDAFTAR HAKMILIK TANAH WILAYAH PERSEKUTUAN KUALA LUMPUR

HIGH COURT MALAYA, KUALA LUMPUR
JOHN LEE KIEN HOW JC
[ORIGINATING SUMMONS NO: WA-24NCVC-26-01-2021]
22 FEBRUARY 2022

Abstract – *The Land Authority is not empowered under the law to depreciate the land tenure of any land not surrendered to the State. Thus, in issuing subdivided titles to a housing developer as part-owner of surrendered pieces of land held under a Master Title together with other lands, it is not open for the Land Administrator to have wholly subdivided the Master Title into Leasehold Titles; to do so would be ultra vires the Federal Constitution and offend ss. 202 and 204E(3A) of the National Land Code.*

LAND LAW: *Conversion – Tenure of land – Conversion from freehold to leasehold status – Whether tenure could be reduced or changed – Whether issuance of new title ought to be in same nature – Whether change in tenure from freehold to leasehold illegal and unconstitutional – Whether consent for change of status relevant – Whether act of depreciating of tenure of master titles ultra vires and unlawful under National Land Code and Federal Constitution – National Land Code, ss. 202(3)(a) & 204E(3A)*

The plaintiffs were the registered proprietors of the subdivided leasehold lands ('subdivided lands'), whilst the defendant was the land registry for the subdivided lands. Following an application by the developer, Syarikat Kerjasama Serbaguna Cuepacs Tanggungan Berhad ('CUEPACS'), for the subdivision of the titles, the defendant replied that it would consider the application on condition that, amongst others, the tenure of the lands should be changed to 99 years leasehold. The developer agreed to the proposal and thus, the defendant, simultaneous to the issuance of the registered document of titles of the subdivided lands to the plaintiffs, had changed the tenure of the lands from that of freehold status to a leasehold term of 99 years. The plaintiffs thus filed an application against the defendant claiming for, *inter alia*: (i) a declaration that the conversion of the land status from freehold to leasehold by the defendant was *ultra vires* and unconstitutional under both the National Land Code ('NLC') and the Federal Constitution ('Constitution'); and (ii) a declaration to change the tenure of the subdivided lands from that of leasehold to freehold.

Held (allowing application with no order as to cost):

(1) The surrender of titles arose from two separate exercises, subdivision and conversion. There is nothing in the NLC that allowed the defendant to reduce or change the tenure of the lands from a freehold to leasehold. Section 202(3)(a) of the NLC made it clear that in such surrender and re-issuance, the land authority shall issue the new title(s) as if the title issued is in continuation to the land so retained. The lands so retained and surrendered in this case were of freehold status. Thus, the issuance of the new titles must be of the same nature as if he were issuing the original title in continuation. It could not be changed to a leasehold status. The same was further affirmed and emphasised in s. 204E(3A). Hence, such action was clearly illegal and unconstitutional. (paras 15, 17 & 21)

(2) Although the defendant argued that the developer had consented to the changing of status to that of 99-year leasehold, such consent was irrelevant and could not be used as a shield or defence. In the absence of such power under the NLC or the Constitution, the act of the defendant depreciating the tenure of the master titles from that of freehold to leasehold were *ultra vires* and unlawful under both the NLC and the Constitution. (paras 22 & 24)

(3) Article 13(1) of the Constitution guarantees that no person shall be deprived of property save in accordance with law. A mere administrative act cannot deprive a person of his or her property. Consent, waiver, or estoppel cannot prevail over any *ultra vires*. The defendant's act of depreciating the tenure of the lands from freehold to leasehold was not in accordance with any law. Instead, it was in contravention of the NLC and the Constitution. The defendant, despite arguing that the lands, after being surrendered, belonged to the State and thus the State had the absolute right to re-alienate it in a leasehold tenure, had failed to cite or prove any law which allowed them to do so. (paras 25-27)

(4) In two earlier cases in respect of the same master titles, involving the same CUEPACS housing scheme, consent judgments were recorded, and the courts had made declarations that the subdivided lands be changed to freehold titles in place of the leasehold titles originally issued by the defendant. The defendant could not, for a similar application arising out of the same subdivision exercise from the same master titles, be allowed to go back and take an inconsistent stance. That would be tantamount to estoppel by conduct as prescribed under s. 115 of the Evidence Act 1950 as well as deprive the plaintiffs of their rights to equal treatment as guaranteed under art. 8 of the Constitution. (paras 28, 29 & 32)

Case(s) referred to:

Archipelago Insurance Ltd v. Eaglexpress Air Charter Sdn Bhd [2016] 1 LNS 548 HC ***(refd)***

Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd [1998] 2 CLJ 75 FC ***(refd)***

Leo Leslie Armstrong (Sebagai Presiden Dan Pemegang Jawatan The Young Men's Christian Association Of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (Yang Dahulunya Di Pegang Oleh Majlis Mesyuarat Kerajaan Negeri Selangor) [2015] 2 CLJ 10 CA ***(foll)***

Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan [2013] 1 LNS 146 HC ***(refd)***

Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1978] 1 LNS 143 FC ***(foll)***

PP v. Khong Teng Khen & Anor [1976] 1 LNS 100 FC ***(refd)***

Sivarasa Rasiah v. Badan Peguam Malaysia & Anor [2010] 3 CLJ 507 FC ***(refd)***

Tan Geok Lan v. La Kuan [2004] 2 CLJ 301 FC ***(refd)***

Legislation referred to:

Evidence Act 1950, s. 115

Federal Constitution, arts. 8, 13(1)

National Land Code, ss. 197, 198, 199, 200, 202(3)(a), 203, 204A, 204B, 204C, 204D, 204E(3A), 204F, 204G, 204H

For the plaintiffs - Teo Siew Chin; M/s Mariadass Lock & Ainuddin
For the defendant - Norazlin Mohamad Yusoff; SFC

Reported by S Barathi

JUDGMENT

John Lee Kien How JC:

Introduction

Fact Of The Case

[1] The plaintiffs in this case are the current registered proprietors of the following subdivided leasehold lands:

(i) PN No. 767 No. Lot 28097;

(ii) PN No. 677 No. Lot 28008;

(iii) PN No. 698 No. Lot 28029;

(iv) PN No. 737 No. Lot 28068;

(v) PN No. 801 No. Lot 28131;

(vi) PN No. 805 No. Lot 28135; and

(vii) PN No. 847 No. Lot 28177

respectively, which are all in Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan (collectively referred to as "subdivided lands"). Defendant is the Land Titles Registrar of Pejabat Tanah & Galian, Wilayah Persekutuan namely the land registry for the subdivided lands.

[2] Earlier on, Syarikat Kerjasama Serbaguna Cuepacs Tanggungan Berhad (CUEPACS) ("developer") being the developer of the housing scheme had applied to the defendant for the subdivision of the following titles:

(i) EMR No. 2702, Lot 420; and

(ii) EMR No. 2703, Lot 421 both in Mukim Batu, Daerah Kuala Lumpur, Negeri Wilayah Persekutuan (collectively referred to as "master titles"). The master titles were freehold lands on which the relevant houses were built.

[3] In reply to the application made by the developer, the defendant wrote a letter dated 4 November 1976 which mentioned amongst others:

(i) The defendant would consider the application; and

(ii) The subdivision of the master titles, however, was on condition that, amongst other, the tenure of the lands should be changed to 99 years leasehold.

[4] The developer had agreed to the proposal and thus, the defendant, simultaneous to the issuance of the registered document of titles of the subdivided lands to the plaintiffs, had changed the tenure of the lands from that of freehold status to a leasehold term of 99 years.

[5] Subsequently, the plaintiffs filed an originating summon in encl. 1 (the "application") against the defendant in this court, wherein the plaintiffs claimed for, amongst others:

(i) A declaration that the conversion of the land status from freehold to leasehold through reference No. (28) dlm. PTG.6/383/74 by the defendant was *ultra vires* and unconstitutional under both the National Land Code ("NLC") and the Federal Constitution ("Constitution"); and

(ii) A declaration to change the tenure of the subdivided lands from that of leasehold to freehold.

Submission By The Plaintiffs

[6] The plaintiffs submitted that the act of the defendant changing the freehold titles with leasehold titles upon conversion and subdivision of the freehold lands is *ultra vire*s and unlawful.

[7] To support, the plaintiffs referred to the (then) Federal Court case of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd* [1978] 1 LNS 143; [1979] 1 MLJ 135.

[8] The plaintiffs also referred to the cases of *Leo Leslie Armstrong (Sebagai Presiden Dan Pemegang Jawatan The Young Men's Christian Association Of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v. Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur (Yang Dahulunya Di Pegang Oleh Majlis Mesyuarat Kerajaan Negeri Selangor)* [2015] 2 CLJ 10; [2014] 5 AMR 1 and *Ngo Ong Chung & Ors v. Pengarah Tanah Dan Galian Perak Darul Ridzuan* [2013] 1 LNS 146; [2013] 10 MLJ 879.

[9] The plaintiffs also brought it to the attention of this court that there were two similar applications earlier in respect of the same CUEPECS housing scheme and the same master titles, with that of the current case. Those two cases were Kuala Lumpur High Court Originating Summons No. 24NCVC-1069-07-2015 and Kuala Lumpur High Court Originating Summons No. WA-24NCVC-1005-07-2017. Both of them were for the same purpose and against the same defendant as our present case. In both cases, consent judgments were recorded and the court had made similar declaration that the status of the lands be changed to that of freehold instead of leasehold.

[10] The defendant, according to the plaintiffs, in the previous cases involving the same housing development and involving the subdivided lands from the same master titles, had conceded to the applications and all of the plaintiffs in those two cases are now possessing freehold titles to their lands upon such declaration by the courts.

Submission By The Defendant

[11] The defendant submitted that the act of the developer surrendering the master titles to the defendant upon the proposal of the defendant based on the letter dated 4 November 1976, showed that the plaintiffs had consented to surrender the lands, and thus the lands had thereby become state lands.

[12] The defendant also submitted that the defendant's act of changing the tenure of the land is by law a valid act as it was done in accordance with ss. 197, 198 and 199 of the NLC before the subdivided lands were re-alienated.

[13] Further, with regard to the consent judgments recorded in the previous two cases, the defendant submitted that those consent judgments should not be binding upon this court. The defendant referred to the cases of *Badiaddin Mohd Mahidin & Anor v. Arab Malaysian Finance Bhd* [1998] 2 CLJ 75 and *Tan Geok Lan v. La Kuan* [2004] 2 CLJ 301. Thus, this court, according to the defendant, is not bound to follow the consent judgments of the previous cases.

A **Findings And Decision By The Court**

[14] After perusing the facts adduced by the parties through affidavits and the exhibits, and the submissions by learned counsels for all parties, I allow the application with no order as to cost. Herein are my reasons.

B *Whether The Defendant Has The Power To Impose The Surrender Of A Perpetuity Land In Exchange For 99-year Leases As A Condition To The Approval Of Applications For Subdivision And Conversion*

[15] It is trite law that the procedure for surrender of titles is governed by Part Twelve of the NLC. In this instant case, the surrender of titles in fact C arises from two separate exercises which are: subdivision and conversion. The relevant provision regarding surrender of titles is as stated in s. 200 to s. 203 of the NLC. For the ease of reference, s. 202 which is the most relevant provision to the current case is reproduced here:

> **202. Re-vesting of part surrendered, and re-survey of part retained.**
>
> D (1) Upon the making of any memorial pursuant to sub-section (4) of section 201, the part in question shall revert to and vest in the State Authority as State land; and the provisions of paragraphs (a) and (b) of section 131 shall apply as if the part had reverted pursuant to a forfeiture.
>
> (2) The revised rent referred to in the said sub-section (4) shall be payable E by the proprietor as from the beginning of the calendar year first commencing after the date on which the memorial is made.
>
> (3) As soon as may be after the making of the memorial, the part retained by the proprietor shall, in the case of land held under Registry title or Land Office title, be re-surveyed in accordance with the provisions of F section 396; and, on completion of the survey:
>
> **(a) the Registrar or Land Administrator shall issue title in continuation to the part so retained as if he were issuing title in continuation to land as a whole;** and
>
> (b) the said revised rent shall be re-calculated by reference to the G actual area of the part as established by the survey.
>
> (4) Where the part retained by the proprietor is held under qualified title, the Registrar or Land Administrator shall correct the boundaries shown on the register document of title and, if it exists and is in his hands, on the issue document of title. (emphasis added)

H **[16]** Further, under a specific part of "Surrender and Re-alienation-Special Provision" (ss. 204A to 204H) of the NLC has provided detail provisions concerning such situation. Of all the sections contained under this part, s. 204E(3A) is of extremely crucial to the application. Section 204E(3A) in discussing the procedure for such exercise says:

I

(3A) **Where the original title is a title in perpetuity, unless the proprietor apply for the land to be re-alienated to him for a term of years, the period for which the land is to be re-alienated shall also be in perpetuity,** and where the original title is for a term of years, the period for which the land is to be re-alienated shall not be less than the remainder of the term of years for which the land was held under the original title, except where the State Authority approves the application under section 90a, and in the case where there are dissimilarities as to the periods for which the original titles are held, the period for which the lands are to be realienated shall be as the State Authority may think fit. (emphasis added)

[17] After examining the facts of the case, I find that the arguments forwarded by the defendant had failed to convince this court to dismiss the application. It is my view that there is nothing in the NLC that allows the defendant to reduce or change the tenure of the lands from a freehold to leasehold. Section 202(3)(a) has made it clear that in such surrender and re-issuance, the land authority shall issue the new title(s) as if he shall issue a title in continuation to the land so retained. The lands so retained and surrendered in this case were of freehold status. Thus, the issuance of the new titles must be of the same nature as if he were issuing the original title in continuation. He cannot change the same to leasehold status. The same is further affirmed and emphasised in the specific s. 204E(3A). The law is crystal clear that a freehold title which is in perpetuity in tenure cannot be changed to leasehold 99-year tenure. Although s. 204E(3A) was only inserted much later, the other provision in the NLC were already in existence the time of this subdivision and conversion exercise. Therefore, the subdivided lands must be of freehold status because the master titles were freehold lands.

[18] The principle of law concerning this (before the insertion of 204E) was lucidly outlined by the (then) Federal Court in *Sri Lempah* (*supra*) to which this court refer now. In that case, the defendant applied for a conversion and subdivision of their freehold land. This was approved by the Land Executive Committee, but they imposed numerous conditions, among others, that the titles would be issued with subdivided titles of 99 years only. His Lordship Suffian LP at p. 136, para. b-c, held, the *dictum* of whom I shall follow, that:

the Government had no power to make the applicant give up its freehold title and receive in exchange a 99 years lease … (emphasis added)

[19] In the same case, Raja Azlan Shah CJ further reasoned (at p. 148, para. E to G) that:

It does not seem to me that the decision of the Land Executive Committee can be possibly be regarded as reasonable or as anything other than ultra vires. It has exceeded its power and the decision was therefore unlawful as being an unreasonable exercise of power not related to the permitted development and for an ulterior purpose that no reasonable authority, properly directing itself, could have arrived at it. The

A Committee, like a trustee, holds power on trust and acts validly only when acting reasonably. In such circumstances, I would follow the *dictum* of Hodson LJ in *Pyx Granite* (*ante*, page 579), to the effect that, if the condition is held to be *ultra vires*, it nullified the whole planning permission. For it must be assumed that without the impugned condition the permission would never have been granted. (emphasis added)

B **[20]** Chang Min Tat J also held in favour of the developer in that case and observed (at p. 149, para. E to G) that:

What was in issue was the right of the Land Executive Committee to impose a condition that the nature of the holding be changed for what is appreciably a lesser one. Quite clearly, it had to consider the application on its merits. If the C landowner has the right to apply for conversion, the Committee has the corresponding duty to consider it properly and reasonable and proper development of the land, the Committee must, if it is to perform its statutory functions, approve it, subject to what conditions it is empowered in section 124(5) to be all or any of the following:

D (a) The payment of a further premium,

(b) The reservation of a new rent,

(c) Compliance with such other requirement as the State Authority may think fit.

E *The question then is whether under sub section (c) above, the Government may demand a depreciation in the tenure. With respect, I agree with the view of Lord President and Raja Azlan Shah C.J that it may not, and that the State Authority would be acting outside the powers conferred on it if it seeks to do so.*

(emphasis added)

F **[21]** Likewise, in this application, the defendant had no power to make the developer giving up the freehold status of the master titles and to receive a 99-year lease in exchange. No such power has been conferred on the defendant by the NLC or the Constitution. Such action is clearly illegal and unconstitutional.

G **[22]** The defendant argued that in our present case, the developer had consented to the changing of status to that of leasehold 99-year. It is apt to note that the developer was asked to do so in pursuant to a subdivision application. It is obvious that the consent in such situation is irrelevant. Also, the defendant alleged that the subdivision and conversion exercise was done H in 1976. As such *Sri Lempah* (*supra*) case which was only decided in 1979 is not relevant. With respect, this is misconceived. For both of these pleas, I am guided by the Court of Appeal decision in *Leo Leslie Armstrong (Sebagai Presiden Dan Pemegang Jawatan The Young Men's Christian Association Of Kuala Lumpur) (Persatuan Pemuda Kristian Kuala Lumpur) v. Jawatankuasa* I *Kerja Tanah Wilayah Persekutuan Kuala Lumpur (Yang Dahulunya Di Pegang Oleh Majlis Mesyuarat Kerajaan Negeri Selangor)* (*supra*) which has glaring similar facts to our instant action.

[23] In that case, Abdul Aziz Abdul Rahim JCA in delivering the unanimous decision of the bench (together with Alizatul Khair Osman Khairuddin and Mohtaruddin Baki JJCA (as they then were)) held (at p. 14 para. 30-p. 17 para. 34) that: A

> [30] … In this respect we recall the passage by the learned Suffian LJ in *Sri Lempah* (*supra*) which was cited above, *which said that the title to be issued for the part to be retained must be in continuation of title to the land as a whole therefore if title to the whole land is one in perpetuity, then it follows that title to the part retained must also be one in perpetuity.* B
>
> [31] Secondly, as to the argument by learned Senior Federal Counsel that the decision of *Sri Lempah* (*supra*) is not applicable because it has no retrospective effect, we are not convinced. Firstly, we are of the view that the High Court and the Federal Court in *Sri Lempah (supra) were interpreting the scope of authority and the extent of the power of the State Government to have a policy where a land owner must give up his title in perpetuity in exchange for a leasehold in order to have his application for conversion or subdivision approved; as well as the power and authority of the Land Executive Committee being the administrative arm of the Government to impose such condition in carrying out of the State Government policy. In our view, the pronouncement of the law on this issue by the High Court and the Federal Court in Sri Lempah (supra) is a pronouncement of the general principle of law applicable when the same or similar provision in law that confers power on the authority is in issue.* C D E
>
> …
>
> [33] … Therefore, in our view, in the light of the above discussion, *the argument* by the learned Senior Federal Counsel *that Sri Lempah's decision has no retrospective effect cannot stand.* Instead, we are of the opinion that in the absence of an express prospective ruling by the Supreme Court in *Sri Lempah* (*supra*), *the learned High Court Judge in this appeal should have applied the principle in Sri Lempah (supra) and held that the decision by the respondent to replace the perpetuity holding to a leasehold holding is ultra vires and unlawful.* Based on the same argument, we hold that the respondent or more particularly its predecessor *do not have the power to ask or to direct or to impose on the appellant to surrender land held in perpetuity in exchange for a 99 year or 30 year lease as a condition for approval of an application for subdivision by the appellant.* F G
>
> [34] Thirdly, with regard to learned Senior Federal Counsel's argument that the appellant in this appeal had indicated their consent to the terms imposed by the respondent in approving the appellant's application for subdivision, thereby distinguishing the facts in this appeal from the facts in *Sri Lempah* (*supra*) where the applicant had not consented to the change from title in perpetuity to leasehold, we are of the view that there is no merit in this argument. The learned Suffian LP had said at p. 145 of the report that in an application for change of conditions of land use, etc under s. 124(1) of the NLC, the question of consent does not arise as consent is implicit in the application. Moreover, we agree with the H I

submission by the learned counsel for the appellant that on the authority of *Federal Hotel Sdn Bhd v. National Union of Hotel, Bar & Restaurant Workers* [1982] 1 MLRA 314; [1983] 1 MLJ 175; [1983] CLJ (Rep) 150, which states that:

> no consent or acquiescence can confer on a court or tribunal with limited statutory jurisdiction any power to act beyond that jurisdiction or can estop the consenting party from subsequently maintaining that such court or tribunal has acted without jurisdiction, ...
>
> *the issue of consent or acquiescence is irrelevant.* (emphasis added)

[24] In the same vein, the act of the defendant depreciating the tenure of the master titles from that of freehold to leasehold were *ultra vires* and unlawful under both the NLC and the Constitution. The applicability of *Sri Lempah* (*supra*) and *Leo Leslie Armstrong* (*supra*) is unequivocal. The defendant has no such power under the NLC or the Constitution to change the status of the lands from freehold to leasehold. The consent of the developer could not be used as a shield or defence here.

[25] Finally, I referred to the Ipoh High Court case of *Ngo Ong Chung Dan Ors v. Pengarah Tanah & Galian, Perak Darul Ridzuan* (*supra*). In that case, the plaintiffs applied to the defendant for conversion and subdivision of lands for development into a housing scheme which was then a freehold land. When the application was approved, the land authority imposed a condition that the tenure of the land would be reduced to a leasehold for a term of 99 years. I agree with Harmindar Singh J (as he then was) (at p. 885 para. 12) that art. 13(1) of the Constitution guarantees that no person shall be deprived of property save in accordance with law. A mere administrative act cannot deprive a person of his or her property. Any act to deprive of his or her property, including the revocation of the freehold status of his property, must be done based on law and in accordance with the procedure prescribed by that law. Consent, waiver, or estoppel cannot prevail over any *ultra vires.*

[26] Similar to the current case, there can be little doubt that the defendant's act of depreciating the tenure of the lands from freehold to leasehold was not in accordance with any law. In fact, it is visibly against the relevant provision of the NLC and decided cases. It is thus contravening the NLC and the Constitution.

[27] The defendant in this present case argued that the act of imposing condition which depreciates the tenure is valid as the lands after being surrendered, belong to the State. Thus, the State has the absolute right to re-alienate the same in a leasehold tenure. However, the defendant failed to cite or prove to this court any law which allow them to do so. Instead, this practise is evidently against the express provision of s. 202 and s. 204E(3A) of the NLC, the Constitution and the *ratio* and decision in *Sri Lempah* (*supra*), *Leo Leslie Armstrong* (*supra*) and the other authorities discussed earlier.

Estoppel And Equal Treatment

[28] I shall now proceed to discuss the fact that the defendant had previously dealt with two legal suits similar to the current action, all of which were and are in respect of the same master titles and involve the same CUEPECS housing scheme. In both of these earlier cases, consent judgments were recorded and the courts had made declarations that the subdivided lands be changed to freehold titles in place of the leasehold titles originally issued by the defendant. No doubt that this court is not bound by any decisions of another High Court *vis-à-vis* consent judgments. However, this court could take notice of such decisions especially if they involve similar subject matters as the matter before me.

[29] The act of the defendant consenting to the terms in the consent judgments is sufficient to show that the defendant agrees to substitute the leasehold titles originally issued with freehold titles. This indeed tantamount to estoppel by conduct as prescribed under s. 115 of the Evidence Act 1950, which says:

> When **one person has by his** declaration, **act** or omission **intentionally caused or permitted another person to believe a thing to be true and to act upon such belief,** otherwise than but for that belief he would have acted, **neither he nor his representative in interest shall be allowed in any suit or proceeding** between himself and that person or his representative in interest to deny the truth of that thing. (emphasis added)

[30] The defendant should not, in principle, be allowed to approbate and reprobate its stance which is as purportedly shown by its conduct in not disputing the applications in two previous cases and in agreeing to enter consent judgments for the previous two groups of land proprietors arising from the same subdivision exercise. I refer to *Archipelago Insurance Ltd v. Eaglexpress Air Charter Sdn Bhd* [2016] 1 LNS 548; [2016] MLJU 236 where it was held:

> [11] *It is trite law that a party should not be allowed to approbate and reprobate its stance.* Similarly, the Defendant cannot be allowed to admit the debt, and also deny the debt on the same breath. This Court finds guidance in the Court of Appeal decision in the case of *Cheah Theam Kheang v. City Centre Sdn Bhd & Other Appeals* [2012] 2 CLJ 16 regarding the Defendant's conduct of blowing hot and cold with its stance:
>
> > In the words of Sir Nicolas Browne-Wilkinson VC in *Express Newspapers* (1990) 3 All ER 376 at pp. 383 to 384: There is a principle of law of general application that it is not possible to approbate and reprobate. That means you are not allowed to blow hot and cold in the attitude that you adopt. *A man cannot adopt two inconsistent attitudes towards another: he must elect between them and, having elected to adopt one stance, cannot thereafter be permitted to go back and adopt an inconsistent stance.* (emphasis added)

[31] The defendant has, in those two cases, consented to the applications to replace the leasehold titles with freehold titles. It cannot now in this case for a similar application arising out of the same subdivision exercise from the same master titles, be allowed to go back and take an inconsistent stance. Verily, the consent judgments of the two previous cases which involved the same master titles, the same defendant, the same subdivision exercise and the same facts of the case, further strengthen the finding of this court in allowing the application.

[32] Bearing in mind that the lands in issue were all subdivided from the same master titles and the conversion from freehold to leasehold tenure were done by the same exercise, the defendant cannot treat the plaintiffs in this case different from the plaintiffs in those two cases. We must be mindful that the plaintiffs' right to equal treatment is guaranteed by art. 8 of the Constitution.

Equality

8. (1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.

(4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.

[33] Indeed, I cite here the following passage in the judgment of Suffian LP in *PP v. Khong Teng Khen & Anor* [1976] 1 LNS 100; [1976] 2 MLJ 166 which has said it succinctly about equal treatment:

> The principle underlying **Art 8 is that a law must operate alike on all person under like circumstances,** not simply that it must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons … for the purpose of legislation. (emphasis added)

[34] The same is also quoted by Gopal Sri Ram FCJ in *Sivarasa Rasiah v. Badan Peguam Malaysia & Anor* [2010] 3 CLJ 507; [2010] 2 MLJ 333. His Lordship has further elaborated equality in length at p. 347 (para A-I) and p. 348 (para D to I) of the case.

[35] Under the Constitution, all subjects in similar or alike circumstances must be treated equally. How could the same group of subdivided landowners be treated differently over the same surrender and subdivide land exercise arising from the same master titles? The defendant has previously conceded to the applications by two different groups of land proprietors in those two suits and thus consent judgments were recorded enabling the status of the lands in issue be reverted to that of freehold. Since the defendant has previously conceded to such applications, on what basis could it treat the plaintiffs in our present case differently and object to the application? The defendant has not forwarded any explanation at all regarding such bias or different approach.

[36] Therefore, this court find that the defendant's opposition of this application now would deprive the plaintiffs of their rights to equal treatment as guaranteed under art. 8 of the Constitution.

Conclusion

[37] The defendant has failed to provide any law supporting its action to depreciate the status and the tenure of the lands. There is nothing to validate such action in the eye of the law. The grounds raised by the defendant has failed to convince this court to dismiss the plaintiffs' application. Therefore, on all counts, the plaintiffs' application must be allowed to ratify an illegal act of which this court could not be condoning. Nothing could prevail over such an *ultra vires* action.

[38] In addition, the plaintiffs must be treated equally with the other claimants in alike circumstances. The defendant cannot take a total contradictory position from its stance consenting to the reversion of the subdivided lands back to the original freehold status which was documented in those two consent judgments.

[39] The application in encl. 1 is hereby allowed with no order as to cost.